



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2017-0740; FRL-9980-81-Region 4]

Air Plan Approval; Tennessee;

Revisions to Stage I and II Vapor Recovery Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the State of Tennessee through the Tennessee Department of Environment and Conservation (TDEC) on November 11, 2017, for the purpose of establishing minor changes to the gasoline dispensing regulations, including adding clarifying language and effective and compliance dates and specifying the counties subject to the reporting requirement rule. EPA has determined that Tennessee's November 11, 2017, SIP revision is approvable because it is consistent with the Clean Air Act (CAA or Act) and with EPA's regulations and guidance.

DATES: This rule is effective [insert date 30 days after date of publication in the Federal Register].

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2017-0740. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information is not publicly available, i.e.,

Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Kelly Sheckler, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9222. Ms. Sheckler can also be reached via electronic mail at sheckler.kelly@epa.gov or sheckler.kelly@epa.gov

SUPPLEMENTARY INFORMATION:

I. Background

On November 11, 2017, TDEC submitted a SIP revision to EPA seeking to add clarity for the benefit of the regulated community with gasoline dispensing facilities. Tennessee is making a minor change to its rules regarding gasoline dispensing facilities (GDF) at subparagraph (1)(d) of rule 1200-03-18-.24 – “For any GDF otherwise exempt from subparagraph (c) of this paragraph based on monthly throughput, if the GDF *ever* exceeds the

applicability threshold specified in subparagraph (c) of this paragraph, it shall be subject to the requirements of subparagraph (c) of this paragraph *and shall remain subject to those requirements* even if its throughput later falls below the threshold. The owner or operator shall inform the Technical Secretary within 30 days following the exceedance.” The revision clarifies the meaning and application of subparagraph (1)(d) of rule 1200-03-18-.24 by adding the words “ever” and “and shall remain subject to those requirements” italicized above.

In addition, this revision replaces the phrase “the effective date of this rule” with the actual effective date of the rule (July 14, 2016) and replaces “three years after effective date” with the actual date of the rule for compliance (August 14, 2019). Finally, this revision adds the list of counties (Davidson, Rutherford, Shelby, Sumner, Knox, Anderson, Williamson and Wilson) that need to report to their permitting authority (if they emit more than 25 tons in a calendar year) and the cross reference to the existing reporting requirement in rule 1200-03-18-.02 to simplify the issuances of notices of authorization under pending permit-by-rule provisions.

Pursuant to CAA section 110(l), the Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in CAA section 171), or any other applicable requirement of the Act. The State’s addition of clarifying language, specific dates for the gas dispensing rule’s effective and compliance dates, as well as specifying the counties subject to the reporting requirement under the cross-referenced rule are approvable under section 110(l) because they merely clarify the application of the rule and are consistent with the CAA and federal regulations.

In this action, EPA is approving TDEC's request to revise the Stage II requirements in the State of Tennessee. EPA published a proposed rulemaking on April 12, 2018 (83 FR 16279), to approve this revision. The details of Tennessee's submittal and the rationale for EPA's action are explained in the proposed rulemaking. The comment period for this proposed rulemaking closed on May 16, 2018. While EPA received six unrelated comments, EPA did not receive any adverse comments for the proposed approval during the public comment period.

II. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of TDEC Regulation section 1200-03-18-.24 entitled "Gasoline Dispensing Facilities-Stage I and II Vapor Recovery," effective August 31, 2017. EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region 4 Office (please contact the person identified in the "For Further Information Contact" section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.¹

III. Final Action

EPA is taking final action to approve the November 11, 2017, revision to the Tennessee SIP, concerning Regulation 1200-03-18-24, *Stage I and II Vapor Recovery Requirements*,

¹ 62 FR 27968 (May 22, 1997).

submitted by the TDEC. This action makes minor changes to clarify the Regulation's meaning and applicability. EPA has determined that Tennessee's November 11, 2017, SIP revision related to the Stage I and II Vapor Recovery Requirements is consistent with the CAA and EPA's regulations and guidance related to removal of Stage II requirements from the SIP and that these changes will not interfere with any applicable requirement concerning attainment or any other applicable requirement of the CAA, and therefore satisfy section 110(l).

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. This action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take

effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [insert date 60 days after date of publication in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: July 2, 2018.

Onis “Trey” Glenn, III
Regional Administrator,
Region 4.

40 CFR part 52 is amended as follows:

PART 52 –APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42.U.S.C. 7401 *et seq.*

Subpart RR - Tennessee

2. Section 52.2220, is amended under CHAPTER 1200-3-18 VOLATILE ORGANIC COMPOUNDS by revising the entry for “Section 1200-3-18-.24, Gasoline Dispensing Facilities” to read as follows:

§52.2220 Identification of plan.

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(c) * * *

Table 1—EPA Approved Tennessee Regulations

State citation	Title/subject	State effective date	EPA approval date	Explanation
**	**	*	*	*
CHAPTER 1200-3-18 VOLATILE ORGANIC COMPOUNDS				
**	**	*	*	*
Section 1200-3-18-.24	Gasoline Dispensing Facilities	8/31/2017	[Insert date of publication in <u>Federal Register</u>], [Insert citation of publication]	
**	**	*	*	*

[FR Doc. 2018-15148 Filed: 7/16/2018 8:45 am; Publication Date: 7/17/2018]